

June 7, 2019

Mr. Henry Leskinen  
Eco-Science Professionals, Inc.  
P.O. Box 5006  
Glen Arm, MD 21057

RE: Familia Posterus LLC Property at 3120 W. Golf Course Road  
Forest Conservation Variance  
Tracking # 02-19-3001

Dear Mr. Leskinen:

A request for a variance from Baltimore County's Forest Conservation Law was received by this Department of Environmental Protection and Sustainability (EPS) on May 10, 2019. The variance, requested in accordance with Section 33-6-116 of this Law, seeks approval to impact 5,753 square feet (sf) of recorded forested Forest Conservation Easement and to remove six (6) specimen trees, some of which are in this Easement, in order to widen an existing residential driveway and construct EPS-required storm drain improvements.

Of the six specimen trees that would be removed, only three are in fair condition or better: a 40-inch red oak (*Quercus rubra*) in good condition; a 32 inch red oak in fair condition; and a 36-inch tulip poplar (*Tulipifera liriodendron*) in fair condition. A 48-inch black oak (*Quercus velutina*), 38-inch red maple (*Acer rubrum*) and 42-inch tulip poplar are also proposed for removal, but are all in poor condition. All of the trees to be removed are native species located in either the aforementioned Forest Conservation Easement or existing Forest Buffer Easement. The 5,753 sf of forest clearing would occur at the edge of the Forest Conservation Easement. The applicant proposes to mitigate for this forest clearing and removal of the three specimen trees in fair condition or better through on and offsite forest conservation and forest buffer mitigation.

The Director of EPS may grant a special variance to the Forest Conservation law in accordance with criteria outlined in Section 33-6-116 of the Baltimore County Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the three criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116 (d)(1) of the Code) requires that the petitioner show that the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of his property. The applicant is seeking to improve the long access drive in order to make it safe for two vehicles to pass. Full application of the law would preclude this project causing a hazard affecting the beneficial use of all of the property. Therefore, we find that this criterion has been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions in the neighborhood. The petitioner's plight is due to unique circumstances associated with the number and locations of specimen trees relative to the existing driveway to be improved rather than the general conditions in the neighborhood. Therefore, we find that this criterion has been met.

The third criterion (Subsection 33-6-116 (d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. No new development would result from granting this variance, and the petitioner proposes to reforest the vast majority of impacted Forest Conservation Easement. Therefore, we find that this criterion has been met.

The fourth criterion (Subsection 33-6-116 (e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. The specimen trees to be removed from the Forest Buffer Easement will be mitigated through on and offsite tree planting required as a condition of alternatives analysis approval. Moreover, the project was redesigned to minimize impacts to the Forest Buffer Easement, and no direct impacts to streams or wetlands are proposed. Therefore, we find that granting of the special variance will not adversely affect water quality and that this criterion has been met.

The fifth criterion (Subsection 33-6-116 (e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance which is the result of actions taken by the petitioner. The petitioner has not taken any actions necessitating this variance prior to its request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116 (e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. Permitting the removal of 5,753 sf of forest and six specimen trees to improve the safety of an access road would be consistent with the spirit and intent the Forest Conservation Law. This is especially true given that 3 of the 6 trees to be removed are in poor condition, and that impacts to the Forest Conservation Easement will be mitigated by reforesting the temporarily disturbed area

and purchasing offsite reforestation credit in an EPS-approved forest planting bank. Therefore, we find that this criterion has been met.

Based on our review, this Department finds that all required criteria have been met. Therefore, the requested variance is hereby approved in accordance with Section 33-6-116 of the Baltimore County Code with the following conditions:

1. Mitigation for the removal of the three native specimen trees in fair condition or better shall be addressed by reforesting the temporarily disturbed portion of the Forest Conservation Easement. This reforestation shall count as half of the 2:1 mitigation required for impacting 5,753 sf of forested the forest. The remaining forest conservation obligation shall be addressed through the purchase of 5,753 sf of reforestation credit at an EPS-approved planting bank. A letter authorizing this bank purchase is enclosed for your use. That letter must be signed by the bank operator documenting the purchase of this credit and returned to EPS prior to approval of any grading permit.
2. The reforestation and the 0.1 acre (i.e. 5,753 sf) of proposed forest clearing shall be detailed on a revised Forest Conservation and Forest Buffer Protection Plan (FCP/FBPP). This plan shall also reflect all applicable conditions of both this variance and the alternatives analysis approval and shall be approved prior to grading and sediment control plan approval.
3. The approximately 21,000 sf of onsite Forest Buffer planting shall be secured via a FBP security as prescribed in the alternatives analysis approval letter. The 5,753 sf of forest conservation mitigation is included in this 21,000 sf.
4. Prior to issuance of any grading permit, blaze orange high visibility fence shall be installed along the limit of disturbance (LOD) wherever the LOD is within 50 feet of any remaining specimen tree, Forest Conservation Easement, or Forest Buffer Easement. This protective fence shall be illustrated in plan view on the FCP/FBP as well as the sediment control plan and its installation included in the Sequence of Operations in that plan.
5. The following note must appear on all subsequent plans for this project:
  - “A special variance was granted on June 7, 2019 to Baltimore County’s Forest Conservation Law to allow clearing of 5,753 square feet of recorded Forest Conservation Easement and remove six specimen trees. Conditions were placed on this variance, including onsite reforestation and purchase of offsite credit to mitigate for the forest and specimen trees to be removed.”

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It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the property owner sign the statement below and return a signed copy of this entire letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please contact Mr. Glenn Shaffer at (410) 887-3980.

Sincerely yours,

David V. Lykens  
Director

DVL/ges

Enclosure

- c. Geoff Schultz, Polaris Land Consultants  
Marian Honecny, Maryland Dept. of Natural Resources

I/we agree to the conditions above to bring my/our property into compliance with Baltimore County's Forest Conservation Law.

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Owner

Date

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Printed Name